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10/658,030	09/09/2003	Ivan W. Ong	2001.34	4054

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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,030

Applicant(s)

ONG, IVAN W.

Examiner

Walter B. Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 13-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/22/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-12 in the reply filed on September 16, 2005 is acknowledged.

Claim Objections

2. Claim 6 is objected to because of the following informalities: should "said first tube" be "said inner tube"? Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 7 and 8 recite the limitation "said chlorinated phenol" in the first line of both claims. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Modak et al.

In regard to claim 1, Modak et al. teach a hose for transporting a fluid (col. 3, lines 10-15) and which exhibits antimicrobial properties (col. 2, lines 37-45) comprising an inner tube made

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from a thermoplastic polymer composition wherein the composition comprises polyvinyl chloride and an antimicrobial agent (col. 4, lines 15-29 and col. 3, lines 54-57; the treated tube corresponds to the claimed inner tube when the tube is both coated and impregnated with the solution since when the tube is coated, the inner surface of the tube is necessarily coated when it is dipped or coated in the solution and since when the tube is impregnated with the solution, the tube is necessarily the inner most layer of the tube).

In regard to claim 2, Modak et al. teach that the inner tube comprises both organic and metallic antimicrobial agents (col. 4, lines 15-21 and 40-42).

In regard to claim 3, Modak et al. teach that the metallic antimicrobial agent comprises silver (col. 4, lines 40-42).

In regard to claims 4 and 5, Modak et al. teach that the antimicrobial agent is 2,4,4'-trichloro-2'-hydroxy diphenyl ether (triclosan, col. 4, lines 15-21 and col. 3, lines 8-9, note that Applicant states in the specification that 2,4,4'-trichloro-2'-hydroxy diphenol ether is also known as triclosan on page 6, lines 1-2).

In regard to claim 6, Modak et al. teach that the hose comprises a covering surrounding the inner tube in the embodiment where the tube is coated since the outer surface of the tube is necessarily coated when it is dipped or coated in the solution thus forming a covering surrounding the inner tube (col. 4, lines 15-21 and col. 3, lines 54-57).

Claims 7 and 8 cannot be treated on their merits due to the indefiniteness of claims 7 and 8 (see 35 U.S.C. 112 rejection of claims 7 and 8 made of record in this Office Action).

In regard to claim 9, the recitation "the hose is a garden hose" is an intended use phrase that has not been given patentable weight, since it has been held that a recitation with respect to

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the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987). Note that claim 9 does not recite structure that limits the hose to a garden hose.

In regard to claim 10, Modak et al. teach a hose comprising an inner tube made from a thermoplastic polymer composition wherein the composition comprises polyvinyl chloride and 2,4,4'-trichloro-2'-hydroxy diphenyl ether (triclosan, col. 4, lines 15-21 and col. 3, lines 8-9, note that Applicant states in the specification that 2,4,4'-trichloro-2'-hydroxy diphenol ether is also known as triclosan on page 6, lines 1-2) (col. 4, lines 15-29 and col. 3, lines 54-57). The term "garden" in the recitation "garden hose" renders the recitation "garden hose" an intended use phrase that has not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987). Note that claim 10 does not recite structure that limits the hose to a garden hose.

In regard to claims 11 and 12, Modak et al. teach that the triclosan is present in an amount of between 0.5 and 5% of the weight of the treatment solution (col. 15, line 55-col. 16, line 2), range that overlaps with the claimed ranges of "between about 200 ppm and about 10,000 ppm" (equivalently, between about 0.02% and about 1%) and "between about 500 ppm and about 5,000 ppm" (equivalently, between about 0.05% and about 0.5%).

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Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,091,442 to Milner.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

11/19/05

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/23/05